UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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THE HIPSAVER COMPANY, INC.,

     Plaintiff,

v

J.T. POSEY COMPANY,

     Defendant.

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Civil Action No. 05-10917 PBS

HIPSAVER'S OPPOSITION TO POSEY'S FOURTH MOTION *IN LIMINE* FOR AN ORDER PRECLUDING TRIAL OF ISSUES INVOLVING THE TRUTH OR FALSITY OF ADVERTISING STATEMENTS NOT INVOLVING THE GARWOOD TESTING

Posey's fourth motion *in limine* seeks to preclude trial of issues of falsity regarding laundering and hip pad placement claims made on the challenged Garwood advertisement. HipSaver does not intend to litigate these false advertising claims. In light of the court's rulings at summary judgment which rejected Posey's counterclaims, HipSaver does not have a need to press either claim and will confine its case to the false claims made in the Garwood advertisement which purport to be based on the Garwood testing.

However, through counsel, Posey has represented that it seeks to circumvent this Court's dismissal of Posey's counterclaims through its affirmative defense of unclean hands. In the unlikely event that the Court allows this circumvention, HipSaver should be allowed to raise these issues to the extent necessary to defend against Posey's attack.

For these reasons, Posey's motion is premature and should be denied.

Respectfully submitted
The HipSaver Company, Inc.
By its Attorneys,

/s/ Courtney M. Quish
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May 22, 2007

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/   Courtney M. Quish
Courtney M. Quish

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